From: H. Peter Anvin
To: Microsoft ATR
Date: 1/27/02 8:28pm
Subject: Microsoft Settlement

To:
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington DC 20530-0001
microsoft.atr@usdoj.gov

From:
H. Peter Anvin
4390 Albany Dr Apt 46
San Jose CA 95129-1621
hpa@zytor.com

To the Honorable Court:

As a resident of the United States and a professional software developer, I would like to comment on the proposed settlement in United States vs. Microsoft, as provided by the Tunney Act. I believe the proposed settlement contains severe flaws in that it seems to lack proper provisions for enforcement, and fails to address some of the real consumer concerns going forward.

First of all, let me refer to you to a very thorough and insightful analysis provided by Mr. Dan Kegel, available on the World Wide Web as http://www.kegel.com/remedy/remedy2.html. Mr. Kegel carefully addresses many of the shortcomings in the proposed settlement, and advises how to adjust it to make it more appropriately fit the current situation.

Rather than reproducing the points of Mr. Kegel's analysis here, I would like to explain why it is imperative that these elements take into account. The goal of the settlement should be to rectify the anomalous situation that has developed in the computer industry through the unlawful anticompetitive conduct on the part of Microsoft.

FOR THERE TO BE A VIABLE ALTERNATIVE TO MICROSOFT, THE INTIMATE CONNECTION BETWEEN OPERATING SYSTEM VENDOR AND APPLICATION SOFTWARE MUST BE BROKEN. At one time, it was commonplace for software vendors to release their software for multiple platforms. Today, due to the overwhelming dominance of the Microsoft platform, Windows is generally the only platform for which software can be obtained, regardless if the software is from Microsoft or not. Therefore, the settlement must

create conditions under which we can move from a Microsoft- centric software market to a competitive software market, and the only way to do so is by making it possible to create a standard platform, an Application Programming Interface (API), and enforce its use. This is addressed by Mr. Kegel in the proposal of the creation of a Windows API Standards Expert Group and requiring Microsoft to cooperate with it; a proposal which I fully support.

FOR THERE TO BE A VIABLE ALTERNATIVE TO MICROSOFT, FILE FORMATS MUST BE DISCLOSED. Microsoft have, by leveraging their Windows monopoly, established monopolies in other areas, such as productivity applications. Today it is commonplace for people in business situations to receive Microsoft Office documents as e-mail attachments; it being assumed that the recipient has access to Microsoft Office as a matter of course. The Findings of Fact ?20 and ?39 address the barrier to entry; this is an essential part of the barrier that needs to be overcome.

FOR THERE TO BE A VIABLE ALTERNATIVE TO MICROSOFT, THE FINAL JUDGEMENT NEEDS TO BE STRICTLY ENFORCED. Microsoft has in the past, such as after the Consent Agreement of 1994, dealt with antitrust settlements by making trivial changes that amount to little more than relabelling to their business practices in order to avoid the bite of the settlement. Due to the very rapid pace of the technology industry, renewed court action is likely to delay until the renewed monopoly situation is already a fait accompli. Therefore, the Final Judgement needs to have independent oversight, capable of imposing strong sanction without further court action.

FOR THERE TO BE A VIABLE ALTERNATIVE TO MICROSOFT, OPEN SOURCE SOFTWARE NEEDS TO BE ALLOWED THE SAME ACCESS AND PROTECTION AS COMPETING COMMERCIAL SOFTWARE. A number of items in the proposed Final Judgement specifically excludes so-called Open Source software. However, it has shown over the past several years that the most likely candidates to challenge Microsoft as a monopoly are exactly such Open Source operating systems and software, such as Linux, an operating system developed by Linus Torvalds in conjunction with a large number of volunteers and, more recently, corporations. It is therefore imperative that the proposed Final Judgement be revised to give Open Source software developers full parity with commercial software developers.

As outlined above, I believe the Proposed Final Judgement is not in the public interest as it will not perform its intended function of restoring competition to the software marketplace. I refer to the proposal of Mr. Kegel for the details on how it may be revised.

Sincerely,

H. Peter Anvin
San Jose, California